
SENATE BILL 5850

State of Washington

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By Senators Fraser, Kastama, Franklin, Hargrove, McAuliffe, Regala, Kohl-Welles, Rasmussen and Kline

Read first time 02/05/2007. Referred to Committee on Human Services & Corrections.

1 AN ACT Relating to protecting the rights of individuals with mental
2 disorders; amending RCW 43.190.030, 71.05.360, and 71.34.355; and
3 repealing RCW 71.24.350.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 **Sec. 1.** RCW 43.190.030 and 1997 c 194 s 1 are each amended to read
6 as follows:

7 There is created the office of the state long-term care ombudsman.
8 The department of community, trade, and economic development shall
9 contract with a private nonprofit organization to provide long-term
10 care ombudsman services as specified under, and consistent with, the
11 federal older Americans act as amended, federal mandates, the goals of
12 the state, and the needs of its citizens. The office of the state
13 long-term care ombudsman shall also provide ombudsman services for
14 persons receiving services from regional support networks and licensed
15 service providers under chapter 71.24 RCW. The department of
16 community, trade, and economic development shall ensure that all
17 program and staff support necessary to enable the ombudsman to
18 effectively protect the interests of residents, patients, and clients
19 of all long-term care facilities is provided by the nonprofit

1 organization that contracts to provide long-term care ombudsman
2 services. The department of community, trade, and economic development
3 shall adopt rules to carry out this chapter and the long-term care
4 ombudsman provisions of the federal older Americans act, as amended,
5 and applicable federal regulations. The long-term care ombudsman
6 program shall have the following powers and duties:

7 (1) To provide services for coordinating the activities of long-
8 term care ombudsmen throughout the state;

9 (2) Carry out such other activities as the department of community,
10 trade, and economic development deems appropriate;

11 (3) Establish procedures consistent with RCW 43.190.110 for
12 appropriate access by long-term care ombudsmen to long-term care
13 facilities and patients' records, including procedures to protect the
14 confidentiality of the records and ensure that the identity of any
15 complainant or resident will not be disclosed without the written
16 consent of the complainant or resident, or upon court order;

17 (4) Establish a statewide uniform reporting system to collect and
18 analyze data relating to complaints and conditions in long-term care
19 facilities for the purpose of identifying and resolving significant
20 problems, with provision for submission of such data to the department
21 of social and health services and to the federal department of health
22 and human services, or its successor agency, on a regular basis; and

23 (5) Establish procedures to assure that any files maintained by
24 ombudsman programs shall be disclosed only at the discretion of the
25 ombudsman having authority over the disposition of such files, except
26 that the identity of any complainant or resident of a long-term care
27 facility shall not be disclosed by such ombudsman unless:

28 (a) Such complainant or resident, or the complainant's or
29 resident's legal representative, consents in writing to such
30 disclosure; or

31 (b) Such disclosure is required by court order.

32 **Sec. 2.** RCW 71.05.360 and 2005 c 504 s 107 are each amended to
33 read as follows:

34 (1)(a) Every person involuntarily detained or committed under the
35 provisions of this chapter shall be entitled to all the rights set
36 forth in this chapter, which shall be prominently posted in the
37 facility, and shall retain all rights not denied him or her under this

1 chapter except as chapter 9.41 RCW may limit the right of a person to
2 purchase or possess a firearm or to qualify for a concealed pistol
3 license.

4 (b) No person shall be presumed incompetent as a consequence of
5 receiving an evaluation or voluntary or involuntary treatment for a
6 mental disorder, under this chapter or any prior laws of this state
7 dealing with mental illness. Competency shall not be determined or
8 withdrawn except under the provisions of chapter 10.97 or 11.88 RCW.

9 (c) Any person who leaves a public or private agency following
10 evaluation or treatment for mental disorder shall be given a written
11 statement setting forth the substance of this section.

12 (2) Each person involuntarily detained or committed pursuant to
13 this chapter shall have the right to adequate care and individualized
14 treatment.

15 (3) The provisions of this chapter shall not be construed to deny
16 to any person treatment by spiritual means through prayer in accordance
17 with the tenets and practices of a church or religious denomination.

18 (4) Persons receiving evaluation or treatment under this chapter
19 shall be given a reasonable choice of an available physician or other
20 professional person qualified to provide such services.

21 (5) Whenever any person is detained for evaluation and treatment
22 pursuant to this chapter, both the person and, if possible, a
23 responsible member of his or her immediate family, personal
24 representative, guardian, or conservator, if any, shall be advised as
25 soon as possible in writing or orally, by the officer or person taking
26 him or her into custody or by personnel of the evaluation and treatment
27 facility where the person is detained that unless the person is
28 released or voluntarily admits himself or herself for treatment within
29 seventy-two hours of the initial detention:

30 (a) A judicial hearing in a superior court, either by a judge or
31 court commissioner thereof, shall be held not more than seventy-two
32 hours after the initial detention to determine whether there is
33 probable cause to detain the person after the seventy-two hours have
34 expired for up to an additional fourteen days without further automatic
35 hearing for the reason that the person is a person whose mental
36 disorder presents a likelihood of serious harm or that the person is
37 gravely disabled;

1 (b) The person has a right to communicate immediately with an
2 attorney; has a right to have an attorney appointed to represent him or
3 her before and at the probable cause hearing if he or she is indigent;
4 and has the right to be told the name and address of the attorney that
5 the mental health professional has designated pursuant to this chapter;

6 (c) The person has the right to remain silent and that any
7 statement he or she makes may be used against him or her;

8 (d) The person has the right to present evidence and to cross-
9 examine witnesses who testify against him or her at the probable cause
10 hearing; and

11 (e) The person has the right to refuse psychiatric medications,
12 including antipsychotic medication beginning twenty-four hours prior to
13 the probable cause hearing.

14 (6) When proceedings are initiated under RCW 71.05.150 (2), (3), or
15 (4)(b), no later than twelve hours after such person is admitted to the
16 evaluation and treatment facility the personnel of the evaluation and
17 treatment facility or the designated mental health professional shall
18 serve on such person a copy of the petition for initial detention and
19 the name, business address, and phone number of the designated attorney
20 and shall forthwith commence service of a copy of the petition for
21 initial detention on the designated attorney.

22 (7) The judicial hearing described in subsection (5) of this
23 section is hereby authorized, and shall be held according to the
24 provisions of subsection (5) of this section and rules promulgated by
25 the supreme court.

26 (8) At the probable cause hearing the detained person shall have
27 the following rights in addition to the rights previously specified:

28 (a) To present evidence on his or her behalf;

29 (b) To cross-examine witnesses who testify against him or her;

30 (c) To be proceeded against by the rules of evidence;

31 (d) To remain silent;

32 (e) To view and copy all petitions and reports in the court file.

33 (9) The physician-patient privilege or the psychologist-client
34 privilege shall be deemed waived in proceedings under this chapter
35 relating to the administration of antipsychotic medications. As to
36 other proceedings under this chapter, the privileges shall be waived
37 when a court of competent jurisdiction in its discretion determines

1 that such waiver is necessary to protect either the detained person or
2 the public.

3 The waiver of a privilege under this section is limited to records
4 or testimony relevant to evaluation of the detained person for purposes
5 of a proceeding under this chapter. Upon motion by the detained person
6 or on its own motion, the court shall examine a record or testimony
7 sought by a petitioner to determine whether it is within the scope of
8 the waiver.

9 The record maker shall not be required to testify in order to
10 introduce medical or psychological records of the detained person so
11 long as the requirements of RCW 5.45.020 are met except that portions
12 of the record which contain opinions as to the detained person's mental
13 state must be deleted from such records unless the person making such
14 conclusions is available for cross-examination.

15 (10) Insofar as danger to the person or others is not created, each
16 person involuntarily detained, treated in a less restrictive
17 alternative course of treatment, or committed for treatment and
18 evaluation pursuant to this chapter shall have, in addition to other
19 rights not specifically withheld by law, the following rights:

20 (a) To wear his or her own clothes and to keep and use his or her
21 own personal possessions, except when deprivation of same is essential
22 to protect the safety of the resident or other persons;

23 (b) To keep and be allowed to spend a reasonable sum of his or her
24 own money for canteen expenses and small purchases;

25 (c) To have access to individual storage space for his or her
26 private use;

27 (d) To have visitors at reasonable times;

28 (e) To have reasonable access to a telephone, both to make and
29 receive confidential calls, consistent with an effective treatment
30 program;

31 (f) To have ready access to letter writing materials, including
32 stamps, and to send and receive uncensored correspondence through the
33 mails;

34 (g) To discuss treatment plans and decisions with professional
35 persons;

36 (h) Not to consent to the administration of antipsychotic
37 medications and not to thereafter be administered antipsychotic

1 medications unless ordered by a court under RCW 71.05.217 or pursuant
2 to an administrative hearing under RCW 71.05.215;

3 (i) Not to consent to the performance of electroconvulsant therapy
4 or surgery, except emergency life-saving surgery, unless ordered by a
5 court under RCW 71.05.217;

6 (j) Not to have psychosurgery performed on him or her under any
7 circumstances;

8 (k) To dispose of property and sign contracts unless such person
9 has been adjudicated an incompetent in a court proceeding directed to
10 that particular issue;

11 (l) To complain about rights violations or conditions and request
12 the assistance of a mental health ombudsman or representative of
13 Washington protection and advocacy. The facility may not prohibit or
14 interfere with a resident's decision to consult with an advocate of his
15 or her choice.

16 (11) Every person involuntarily detained shall immediately be
17 informed of his or her right to a hearing to review the legality of his
18 or her detention and of his or her right to counsel, by the
19 professional person in charge of the facility providing evaluation and
20 treatment, or his or her designee, and, when appropriate, by the court.
21 If the person so elects, the court shall immediately appoint an
22 attorney to assist him or her.

23 (12) A person challenging his or her detention or his or her
24 attorney((~~τ~~)) shall have the right to designate and have the court
25 appoint a reasonably available independent physician or licensed mental
26 health professional to examine the person detained, the results of
27 which examination may be used in the proceeding. The person shall, if
28 he or she is financially able, bear the cost of such expert information
29 [examination], otherwise such expert examination shall be at public
30 expense.

31 (13) Nothing contained in this chapter shall prohibit the patient
32 from petitioning by writ of habeas corpus for release.

33 (14) Nothing in this chapter shall prohibit a person committed on
34 or prior to January 1, 1974, from exercising a right available to him
35 or her at or prior to January 1, 1974, for obtaining release from
36 confinement.

37 (15) Nothing in this section permits any person to knowingly

1 violate a no-contact order or a condition of an active judgment and
2 sentence or an active condition of supervision by the department of
3 corrections.

4 **Sec. 3.** RCW 71.34.355 and 1985 c 354 s 16 are each amended to read
5 as follows:

6 Absent a risk to self or others, minors treated under this chapter
7 have the following rights, which shall be prominently posted in the
8 evaluation and treatment facility:

9 (1) To wear their own clothes and to keep and use personal
10 possessions;

11 (2) To keep and be allowed to spend a reasonable sum of their own
12 money for canteen expenses and small purchases;

13 (3) To have individual storage space for private use;

14 (4) To have visitors at reasonable times;

15 (5) To have reasonable access to a telephone, both to make and
16 receive confidential calls;

17 (6) To have ready access to letter-writing materials, including
18 stamps, and to send and receive uncensored correspondence through the
19 mails;

20 (7) To discuss treatment plans and decisions with mental health
21 professionals;

22 (8) To have the right to adequate care and individualized
23 treatment;

24 (9) Not to consent to the performance of electro-convulsive
25 treatment or surgery, except emergency life-saving surgery, upon him or
26 her, and not to have electro-convulsive treatment or nonemergency
27 surgery in such circumstance unless ordered by a court pursuant to a
28 judicial hearing in which the minor is present and represented by
29 counsel, and the court shall appoint a psychiatrist, psychologist, or
30 physician designated by the minor or the minor's counsel to testify on
31 behalf of the minor. The minor's parent may exercise this right on the
32 minor's behalf, and must be informed of any impending treatment;

33 (10) Not to have psychosurgery performed on him or her under any
34 circumstances;

35 (11) To communicate immediately with a parent or legal guardian
36 whenever a minor is detained for evaluation and treatment pursuant to

1 this chapter. Parents or legal guardians may be present at all
2 hearings;

3 (12) To complain about rights violations or conditions and request
4 the assistance of a mental health ombudsman or representative of
5 Washington protection and advocacy. The facility may not prohibit or
6 interfere with a resident's decision to consult with an advocate of his
7 or her choice.

8 NEW SECTION. Sec. 4. RCW 71.24.350 (Mental health ombudsman
9 office) and 2005 c 504 s 803 are each repealed.

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